

BEFORE THE FORUM
FOR REDRESSAL OF CONSUMER GRIEVANCES
IN SOUTHERN POWER DISTRIBUTION COMPANY OF A.P LIMITED TIRUPATI

On this the 25th day of September 2019

C.G.No:190/2019-20/ Guntur Circle

Present

Sri. A. Sreenivasulu Reddy

Member (Finance)

Sri. V. Venkateswarlu

Member (Technical)

Sri. Dr. R. Surendra Kumar

Independent Member

Between

G. Malleswari,
W/o. Dr. Venkata Narayana,
D.No.13-7-2/1,,
Besthavaripalem,
Chirala,
Prakasham - Dist

Complainant

AND

1. Assistant Accounts Officer/ERO/ Guntur Town-2
2. Assistant Executive Engineer/O/Guntur D 8
3. Deputy Executive Engineer/O/Guntur Town -2
4. Executive Engineer/O/Guntur Town 1

Respondents

ORDER

1. The case of the complainant is that complainant's father purchased the vacant land in residential locality in Door.No.31 A, Kondal Road, Krishna Nagar, Guntur. After demise of her father , her mother executed will vide No. 62/96 , Sub Register Office , Chirala. She and her sister are in possession and enjoyment of the property till date. During lifetime of her father, he entrusted to safe guard the property to Mr. N Narasimhulu from tresspass. After the demise of the said Narasimhulu, the entrustment passed on to his son Mr. Srinivas who obtained electrical connection without her notice.

D.B.V.Ramana Kumar impersonated illegal forged and fraudulent gift deeds from his so called grandfather and filed OS No. 662/05 citing N. Srinivas as 4th defendant as collusive and got the electrical connection transferred from Srinivas to himself without any document . Srinivas was A1 in CC. No. 79/08 on the file of Hon'ble Magistrate for prohibition and excise, Guntur along with D.B.V. Ramana Kumar and Mamidi Harikrishna . They were convicted for the offence under Sections.

DESPATCHED

DATE

26/9

120 B , 448, 468 & 474. Civil Suit No: 46/05 was adjudged in her favour and claim of the defendant and accused was dismissed on 29.01.2018 on the file of IVth Additional District Judge Guntur Complainant is requesting to enquire on what basis two illegal service connections were issued as they are using these illegal connections to prove their possession on land along with connivance of electricity officials connected to grab her property. Complainant is also requesting to terminate those two electrical service connections.

Complainant mentioned only Sc.No:1122300154571 in the name of M. Hari Krishna S/o Yedukondulu to be disconnected.

Since complainant is requesting for dismantling of service connections in the name of others, a report was called for from DE/O /Guntur

DE/O/Guntur submitted a report stating that the Sc.No:1122300117286 was released on 19.06.2000 in the name of M.Srinivas and same was title transferred in the name of D.B.V. Ramana Kumar on 30.07.2005.

Sc.No:1122300154571 was released on 27.03.2009 in the name of M. Hari Krishna Prasad based on the documents produced by the consumer.

On 02.11.2015 P. Hari Prasad resident of Hyderabad approached DE/ Town - / Guntur and represented that his wife P.Rajyalaksmi and Gollapalli Malleswari W/o Dr. Venkata Narayana were the actual owners of the above premises and requested to disconnect services as the existing consumers were not legal heirs of the property and also produced documents of the Court cases in OS No's:46/2005 , 159/2007 and 160/2007. Then AE/D8 Section/Guntur approached SLA of AP Transco for legal opinion and also issued notice to D.B.V. Ramana Kumar of Sc.No:117286 and M. Harikrishna Sc.No:154571 to produce proof of ownership based on legal opinion issued by SLA. Nobody approached to their office with ownership proof within stipulated time. Then Sc.:1117286 was disconnected based on legal opinion. After obtaining common judgments passed in OS No:46/2005 , 159/2007 and 160/2007 on 31.01.2018 of Smt Gollapalli Malleswari approached to section office D8/Guntur for disconnection of said services. Again the section officer approached SLA for legal opinion on the judgment and SLA has given opinion stating that "it is better to consider their disconnection request after passing of final decree in their favour".

Since the report of DE/O/Guntur shows that a civil dispute is pending for final adjudication, the forum was of the opinion that the complaint is not maintainable before this forum. Hence personal hearing was conducted and after hearing rejected the complaint as per Clause 10 (a) of Regulation No.3 of 2016 issued by the Hon'ble Commission.

Aggrieved by the rejection of the complaint, complainant preferred representation to the Hon'ble Vidyut Ombudsman vide Appeal No: 20/2019-20 and Hon'ble Vidyut Ombudsman was pleased to set aside the order of the forum and directed this forum to deal with the complaint in accordance with the Regulation. No.3 of 2016.

In accordance with the directions of Hon'ble Vidyut Ombudsman, the case was registered and notices were sent to the Respondents. DE filed written submission. The written submission filed by him are almost similar to the contents mentioned in his report to the forum which are already mentioned in brief above.

He also further stated that complainant not produced final decree of partition of said property and Sc.No:1122300154571 which is in the name of M. Harikrishna was not disconnected till to date as the supply is being utilized by paying CC charges regularly by the residents of the disputed premises. Soon after the receipt of final decree order copy from the court further action will be taken in accordance with law as the residents are still not evicted from this premises said to have been under undisputed ownership of the complainant.

2. A Personal Hearing was conducted through Video Conferencing on 12.06.2020 and 17.06.2020 . Complainant was absent. But sent written argument through post.
3. The point for determination is whether this Forum is competent to issue directions to Respondents for dismantlement of Sc.No 1122300154571?

Admitted facts in this case are that the Sc.No 1122300117286 in the name of M. Srinivas was released on 19.06.2000 and subsequently it was transferred in the name of D.B.V. Ramana Kumar on 30.07.2005. After P.Hariprasad made complaint on 02.11.2015 stating that the premises belongs to his wife and her sister G.Malleswari complainant herein, a legal opinion was obtained and basing on the said legal opinion, a notice was issued to both the consumers for production of documents to prove their title to the property . Both the consumers said to have not approached

the respondents with their documents within the stipulated time and Sc.No. 1122300117286 was disconnected.

According to Respondents after passing of common Judgment in the all three suits referred above on 31.01.2018 complainant herein approached again for disconnection of service connections. Then section officer said to have approached SLA for legal opinion and the SLA said to have given opinion to consider the request of disconnection made by the complainant after passing of final decree in the favour of complainant.

Procedure to be followed for supply of Electricity:- is given under Clause No. 5.2 of GTCS. The relevant sub-clauses for release of service connection are 5.2.2 and 5.2.3 which are as follows:-

5.2.2 :- *The requisition shall be made by the owner or occupier of the premises for which supply is required. The application form complete in all respects and accompanied with the undertaking and prescribed fees, charges and security, shall be submitted at the office of the Officer specified in the Designated Officers' Notification. The company shall verify the application and the enclosed documents at the time of receipt of application, and shall issue a written acknowledgement.*

5.2.3 :- *An applicant who is not the owner of the premises he occupies and intending to avail of supply shall submit an indemnity Bond drawn by the owner of the premises in favour of the company whereby the owner of the premises undertakes to indemnify the company for any loss caused to the company by the applicant (who is the tenant occupant of the premises) arising out of the release of service to the tenant/occupant. Otherwise he shall be required to pay three times the normal security deposit apart from providing proof of his being in lawful occupation of the premises”.*

So the above Clause 5.2.3 shows that the applicant who is not able to furnish documents to prove that he is owner of the premises /occupant of the premises is also entitled for release of service provided if he pays 3 times the normal security deposits apart from providing proof of his being in lawful occupation of the premises. It is not possible for the Respondents to determine whether the applicant is in lawful occupation of the premises or not? At best they may verify the document to ascertain whether the document is in favour of the applicant and schedule mentioned in the

document is in consonance with the boundaries of the premises for which the service connection is sought.

In case, after releasing of service if there is a dispute in respect of the ownership and possession of the property for which service connection was released, generally the field officers will issue notice to the consumers informing him about the objection received by them with a request to furnish documents showing his entitlement for the premises. If the consumer and the objector files documents claiming ownership for the same premises, it will be referred to legal opinion and proceed to take further action basing on the legal opinion. In the most of the cases where both parties claim right of ownership and possession of the premises, both parties will be advised to approach the civil court. If the consumer fails to produce documents to prove his ownership of the premises for entitlement of the disputed service connection, notice for disconnection has to be issued and there after service connection has to be dismantled.

The procedure for disconnection of supply due to eviction is provided

In Clause No.17.1.1 of GTCS which is as follows:-

17.1.1:- *Where, subsequent to commencement of supply of electricity by the Company, orders are passed under any law for evicting the consumer from the Premises to which supply has been given and such eviction is carried out, the Designated Officer of the Company in this regard may discontinue supply of electricity to such premises and remove its installations and equipment and its action shall not be liable to be questioned as breach of Agreement or otherwise. He shall without prejudice to the other rights of Company recover from such consumers the expenses incurred for dismantling its installation and removing its equipment.*

Once service connection is provided by the licensee, the service connection can be disconnected only as provided in the GTCS and regulations issued by the Hon'ble APERC from time to time which are referred above.

In this case the account statement of the service Sc.No. 1122300154571 shows that it is released in the name of Sri. Mamidi Harikrishna on 27.03.2009. The account statement further shows that the residents in the premises for which the above said service connection is released are paying CC bills regularly and paid up to July'2020. The pattern of paying bills by the occupants of the premises shows that they are

paying in between Rs.500.00 to Rs.700.00 per month. Respondent.No.3 in his written submission stated that the service connection was not disconnected as the supply is being availed by paying CC charges regularly by the residents of the disputed premises.

The contention of the complainant is that the service connection was released by the Respondents without following the prescribed procedure to Sri .M. Harikrishna who is a rank trespasser and he is also party to the civil suit. O. S. No. 46/2005 and the other suits are ended in her favour. The opinion of SLA that final decree has to be obtained has nothing to do with the dispute as it is between the complainant and her sister. SLA also accepted that the premises belongs to complainant and her sister. The Respondents ought to have proceeded further to take further action of disconnection of the service when consumer failed to respond to the notice issued by the department to produce documents to prove his legal possession.

This Forum is constituted as per Regulation. No. 3/2016 by the Hon'ble Commission in consonance of the powers vested in it as per sub- section 5 of section 42 of Electricity Act, 2003. This Forum is having limited powers. This Forum can intervene and pass orders only when the officers of the Licensee (Respondents) fail to follow the procedures given in GTCS, Regulations and guidelines given by the Hon'ble Commission and Licensee from time to time. In this case complainant is seeking relief of disconnection of the service released in the name of another person after 9 years from the date of release of the service. Admittedly as per the records maintained by the Licensee, the disputed service is being utilized by the occupants of the premises. As per the prescribed procedure to be followed by this Forum, only officers of the Licensee can be arrayed as Respondents and notice can be given to them for filing written submissions in the complaint filed against them alleging for the deficiency of the service/omission to do a particular act. Natural justice requires that notice has to be given to the affected party and to be heard before giving directions to the respondents to disconnect the service released in the name of third party on the ground that he is not in legal possession of the premises and obtained service connection by fabricating the documents

This Forum is not competent to issue notice to Third party basing on the complaint alleging that the premises belongs to him and service connection was released in the name of third party illegally by the officers of the Licensee. Even if

the Forum gives notice to the third party and he fails to attend before the Forum, the Forum is not competent to pass orders against him by setting him as ex-parte. Assuming if third party appears and claims ownership and lawful possession of the premises for which the disputed service connection was released and the said issue also cannot be decided by this forum. Keeping all this facts in to consideration only earlier the Forum has rejected the complaint.

Admittedly the proceedings before the District Consumer Forum constituted under consumer protection Act, 1986 are summary in nature. It was held by Hon'ble Apex Court of India in *Oriental Insurance Company Limited Vs Munimahesh Patel* :-

“Proceedings before the commission are essentially summary in nature and adjudication of issues which involve disputed factual questions should not be adjudicated. “

It was also held by Hon'ble Apex Court of India in *Synco Industries Vs State Bank of Bikaner and Jaipur* :-

“Given the nature of the claim in the complaint and prayer for damages in the sum of Rs. Fifteen crores and for an additional sum of Rs. Sixty Lakhs for covering the cost of travelling and other expenses incurred by the appellant, he is obvious that very detailed evidence would have to be led, both to prove the claim and thereafter to prove the damages and expenses. It is, therefore, in any event not an appropriate case to be held and disposed of in a summary fashion. The National Commission has right in giving to the appellant liberty to move to the Civil court. This is an appropriate claim for a civil court to decide and, obviously, was not filed before a Civil court to start with because, before the consumer forum, and figure in damages can be claimed without having to pay court fees. This, in that sense, is an abuse of the process of the consumer forum”.

Relying upon the above cited decisions and in view of proceedings before District Consumer Forum are summary in nature, the same analogy will also applicable to the proceedings before this Forum. Hence the proceedings before this forum are also summary in nature.

In this case on the application of the complainant for removal of service connection, respondents obtained legal opinion from their SLA who advised to wait till the completion of final decree proceedings in the Civil court. This forum is not

competent in this case to express its opinion whether the opinion of SLA is not correct on the ground that the final decree proceedings are only in between the sisters for allotment of their respective shares in the scheduled properties mentioned in the final decree petition and it has nothing to do with disconnection of service in the name of third party who has no right in the property. Respondents basing on the opinion of SLA and that the occupants of the premises are not evicted refused to disconnect the service connection. Respondents are not supposed to act unilaterally against the advice of the SLA. Respondents rightly declined to disconnect the service connection. This forum cannot give directions contrary to the advice of SLA. If the complainant is of the opinion that the opinion of the SLA is not correct, her remedy is elsewhere but not before this forum. Hence there are no merits in the complaint. The point is answered accordingly.

4. In the result complaint is dismissed.

If aggrieved by this order, the Complainant may represent to the **Vidyut Ombudsman, Andhra Pradesh**, 3rd Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008, within 30 days from the date of receipt of this order.

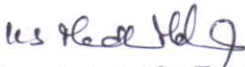
This order is passed on this, the day of 25th September' 2020.

Sd/-
Member (Finance)

Sd/-
Member (Technical)

Sd/-
Independent Member

Forwarded By Order


Secretary to the Forum

To

The Complainant

The Respondents

Copy to the General Manager/CSC/Corporate Office/ Tirupati for pursuance in this matter.

Copy to the Nodal Officer (Executive Director/Operation)/CGRF/APSPDCL/TPT.

Copy Submitted to the Vidyut Ombudsman, Andhra Pradesh , 3rd Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008.

Copy Submitted to the Secretary, APERC, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Lakdikapool, Hyderabad- 500 004.